

HORWITZ + ARMSTRONG^{LLP}
Attorneys at Law

John R. Armstrong, Partner

26475 Rancho Parkway South
Lake Forest, California 92630
Telephone (949) 540-6540
Facsimile (949) 540-6578

E-mail: jarmstrong@hcalaw.biz

February 25, 2014

Via Email

The Honorable Richard J. Sullivan
United States District Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, New York 10007-1312
Sullivan@nysd.uscourts.gov

Re: SEC v. Cole, et al., 12 civ 8167 (RJS) – Defendant Quintanilla’s Supplemental Response and Cross Motion to Plaintiff’s Motion for Summary Judgment

To the Honorable Richard J. Sullivan:

After further review of our responsive letter filed February 21, 2014 (Dkt. No. 108), we believe that the letter is ambiguous regarding our position on the Commission’s claims against Defendant Quintanilla under 10(b) and 10b-5. We acknowledge that 15 U.S.C. § 78t(e) provides the Commission with a cause of action against defendants for aiding and abetting violations of 10(b) and 10b-5, but the relevant audits here happened *before* 2010, i.e., *before* §78t(e) was amended to allow the lesser “reckless” standard for SEC-based aiding and abetting claims. Therefore, any claims by the Commission against Defendant Quintanilla fall under the higher *knowingly* aided standard rather than the lesser gross *recklessness* standard that presently applies under the amended 2010 Dodd Frank Act.

Sincerely,

/s/ John R. Armstrong

cc: Securities and Exchange Commission (via email)